

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

Bents Trucking & Steve Bents

**ADMINISTRATIVE
CONSENT ORDER
NO. 2010-AFO-27**

TO: Steve Bents
3831 Knauf Ave
Rushmore, MN 56168

I. SUMMARY

This administrative consent order (order) is entered into between Bents Trucking and Steve Bents (collectively referred to as Bents Trucking) and the Iowa Department of Natural Resources (Department).¹ In the interest of avoiding litigation, Bents Trucking hereby agrees to ensure that all of its employees maintain the certification required to haul manure, display the certification number of the commercial manure service with three-inch or larger letters and numbers on the side of the vehicle used to transport manure, and pay an administrative penalty.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Don Cunningham, Environmental
Specialist
IDNR Field Office #3
1900 N. Grand
Spencer, IA 51301
712/262-4177

Relating to legal requirements:

Carrie Schoenebaum, Attorney at Law
Iowa Department of Natural Resources
Wallace State Office Bldg. 502 E. 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

¹ Bents Trucking is registered with the Minnesota Secretary of State, but it is not registered in Iowa.

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II. JURISDICTION

The parties hereby agree that this order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I, or Iowa Code chapter 459 and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

The parties hereby agree to the following statement of facts:

1. On December 17, 2009, the Department Field Office 3 received a complaint alleging that several trucks without manure certification labeling were hauling manure from the Sunrise Farms Rentals, LLC confinement feeding operation located at 2060 White Ave, Harris, Iowa. Upon receipt of the complaint Don Cunningham, Environmental Specialist with the Department, went to the location to investigate. When he arrived he observed a white freightliner semi-truck with a yellow trailer with no manure certification signage being loaded with manure from the confinement feeding operation. The driver of the semi-truck identified himself as Leo Bents. Mr. Cunningham asked him for his manure certification and he stated that he was not certified. Mr. Bents called his supervisor, Steve Bents, and relayed a message to Mr. Cunningham that they were not aware that they were required to have any certification to haul manure.
2. On January 4, 2010, a Notice of Violation was sent to Bents Trucking for hauling manure without the proper certification and signage.

IV. CONCLUSIONS OF LAW

The parties hereby agree to the following conclusions of law:

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including certification requirements for hauling manure. The Commission has adopted such rules at 567 IAC chapter 65.
2. Iowa Code section 459.315(1) states that a person shall not act as a commercial manure service representative unless the person is certified. Iowa Code section 459.315(2) states that a person who is required to be certified as a commercial manure service representative must be certified each year. 567 IAC 65.1 defines a commercial manure service representative as a manager, employee, agent, or contractor of a commercial manure service, if the person is engaged in transporting, handling, storing, or applying manure on behalf of the service. The above stated facts show non-compliance with this provision.

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- 3 567 IAC 65.19(8) "e" states that
 Any vehicle used by a certified commercial manure service or commercial manure service representative to transport manure on a public road shall display the certification number of the commercial manure service with three-inch or larger letters and numbers on the side of the tank or vehicle. The name and address of the certified commercial manure service representative designated as the manager shall also be prominently displayed on the side of the tank or vehicle.

The above stated facts demonstrate non-compliance with this provision.

V. ORDER

THEREFORE, the Department orders and Bents Trucking agrees to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

1. Bents Trucking shall ensure that all of its employees are properly certified to haul, apply or otherwise handle manure;
2. Bents Trucking shall ensure that all its trucks which haul manure display the proper signage; and
3. Bents Trucking shall pay a penalty of \$5,000.00 within 30 days of the date the Director signs this order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.
2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is \$5,000.00. The administrative penalty is determined in accordance with the following:

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Economic Benefit – Bents Trucking obtained an economic benefit by hauling manure without the proper certification. In consideration of the certification cost and signage cost it is estimated that \$500.00 was saved.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The violations cited in this order threaten the integrity of the regulatory program because compliance with the regulations is required of all persons in this state. Based on the above considerations, \$2,000.00 is assessed for this factor.

Culpability – All manure haulers have a duty to remain knowledgeable of the Department's requirements and to be alert to the probability that their conduct is subject to the Department's rules. Based on the above considerations, \$2,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175 and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent of Bents Trucking. By signature to this order, all rights to appeal this order are waived.

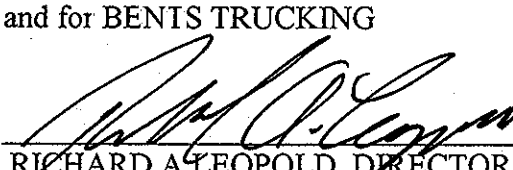
VIII. NONCOMPLIANCE

Compliance with section V of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order. Failure to comply with this order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



STEVE BENTS in his personal capacity
and for BENTS TRUCKING

Dated this 17 day of
May, 2010.



RICHARD A. LEOPOLD, DIRECTOR

Dated this _____ day of

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IOWA DEPARTMENT OF NATURAL RESOURCES 5-20, 2010.

Bents Trucking, LLC, Field Office 3, Carrie Schoenebaum; Don Cunningham, VIII. E.